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# A BILL FOR AN ACT

RELATING TO PILOTAGE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. Chapter 462A, Hawaii Revised Statutes, is  
2       amended by adding a new section to be appropriately designated  
3       and to read as follows:  
4       "§462A-       Liability. (a) A vessel subject to this  
5       chapter and the owner or operator of the vessel shall defend,  
6       indemnify, and hold harmless the pilot, any pilot association to  
7       which the pilot belongs, and their officers and employees, with  
8       respect to liability arising from any claim, suit, or action, by  
9       whomever asserted, resulting in whole or in part from any act,  
10       omission, or negligence of the pilot, any pilot association to  
11       which the pilot belongs, and their officers and employees.

12       (b) The obligation to indemnify under this section shall  
13       not apply to the extent that it causes the amount recoverable  
14       from a vessel and the owner or operator of the vessel to exceed  
15       the limits of liability to which it is entitled under any bill  
16       of lading, charter party, contract of affreightment, or law."

17       SECTION 2. Section 462A-3, Hawaii Revised Statutes, is  
18       amended to read as follows:



1       **"§462A-3 Powers and duties of the director.** In addition  
2 to any other powers and duties authorized by law, the director  
3 shall:

4       (1) Grant licenses to port pilots and deputy port pilots  
5 pursuant to this chapter, when the need arises;

6       (2) Adopt, amend, or repeal rules in accordance with  
7 chapter 91 as may be necessary to carry out the  
8 purposes of this chapter which are to provide for  
9 maximum efficiency in navigating vessels entering or  
10 leaving the waters of this State; maintain a pilotage  
11 system devoted to the preservation, and protection of  
12 lives, property, and vessels entering or leaving  
13 waters of the State; and ensure an adequate supply of  
14 qualified pilots in aid of commerce and navigation;

15       (3) Develop appropriate standards for licensure and  
16 renewal of licensure to maintain an adequate supply of  
17 pilots based on the needs of users of pilotage  
18 services or the department of transportation's harbors  
19 division. Licensing and renewal licensing  
20 requirements shall include examinations and  
21 investigations to determine whether persons applying



1 for full port pilot, or deputy port pilot licenses are  
2 qualified;

3 (4) Enforce this chapter and rules adopted pursuant  
4 thereto;

5 (5) Suspend, revoke or deny the issuance of any license  
6 for any cause prescribed by this chapter, or for any  
7 violation of the rules;

8 (6) Investigate any person for violations of any  
9 provisions of this chapter;

10 (7) Adopt methods to improve disciplinary and enforcement  
11 programs against violations of this chapter; and

12 (8) Do all things reasonable, necessary, and expedient to  
13 insure proper and safe pilotage and to facilitate the  
14 efficient administration of this chapter."

15 SECTION 3. Section 462A-6, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 **"§462A-6 Duration and renewal of license.** All licenses  
18 shall expire on June 30 of even-numbered years. All applicants  
19 for renewal of license shall submit a renewal application  
20 pursuant to section 436B-13 and comply with all applicable rules  
21 of the department. No applicant shall be denied a renewal of



1 the applicant's license, except as provided in this chapter, as  
2 long as the applicant possesses the qualifications established  
3 by the department and remains in active service as a pilot in  
4 the State."

5 SECTION 4. Section 462A-18, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 **"§462A-18 Vessels required to take a pilot.** Every vessel  
8 [~~involved in trade or commerce~~], other than an exempt vessel,  
9 entering or departing from any port in or traversing the waters  
10 of the State designated as pilotage waters shall employ a pilot  
11 licensed under this chapter; provided that a vessel declared by  
12 the director of transportation to be in immediate danger of  
13 destruction or which poses an immediate hazard to public safety  
14 by its presence in the harbor may be moved without a pilot when  
15 a pilot is not immediately available."

16 SECTION 5. Section 462A-19, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 **"§462A-19 Exempt vessels.** This chapter does not apply to:

- 19 (1) Any vessel required by the laws of the United States  
20 of America to be under the direction and control of a  
21 federally licensed pilot;



- 1 (2) Public vessels of the United States of America;
- 2 (3) Fishing vessels that have been issued a fishery
- 3 license or appropriately endorsed registry under the
- 4 laws of the United States of America; [~~or~~]
- 5 (4) Tugs or towboats of 1,600 gross tons or less which are
- 6 registered in the United States if the master, mate,
- 7 or operator is licensed in the United States and has
- 8 made a minimum of six round trips into and out of the
- 9 pilotage water which the vessel is traversing[~~-~~]; or
- 10 (5) Vessels under 300 gross tons.

11 This section provides minimum pilotage requirements, and is

12 not intended to negate the department of transportation's

13 responsibility for the safety of all ports and shore waters in

14 the State, nor does it limit the department's right to require

15 additional pilotage should that department determine it is

16 necessary to ensure safety in the ports or shore waters of the

17 State."

18 SECTION 6. Statutory material to be repealed is bracketed

19 and stricken. New statutory material is underscored.

20 SECTION 7. This Act shall take effect on July 1, 2050.



**Report Title:**

Pilotage; Port Pilots; Liability; Vessels

**Description:**

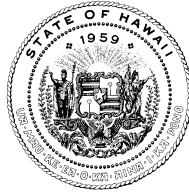
Regulates the liability of port pilots. Exempts vessels under 300 gross tons from pilotage regulation. Requires the director of commerce and consumer affairs to develop appropriate standards for port pilot license renewal. Requires pilot license renewal to be pursuant to section 436B-13, HRS. Effective 07/01/2050. (SD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



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**PRESENTATION OF THE  
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE HOUSE COMMITTEE ON  
TRANSPORTATION

TWENTY-EIGHTH LEGISLATURE  
Regular Session of 2015

Monday, March 23, 2015  
11:00 a.m.

**TESTIMONY ON SENATE BILL NO. 2, S.D. 2, RELATING TO PILOTAGE.**

TO THE HONORABLE HENRY J.C. AQUINO, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

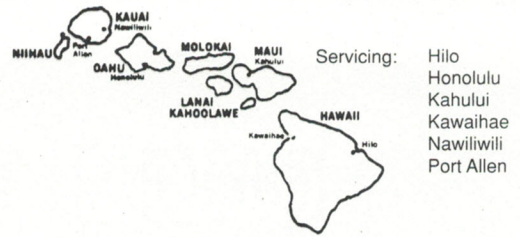
My name is Alan Taniguchi, Executive Officer for the Port Pilots Program, Professional and Vocational Licensing Division ("PVLD") of the Department of Commerce and Consumer Affairs. Thank you for the opportunity to present testimony on Senate Bill No. 2, S.D. 2, Relating to Pilotage.

The PVLD is concerned that the language in Section 2, page 2, lines 19-21 and continued on page 3, lines 1-2, implies that the PVLD would be required to determine if pilots are qualified every time they renew their licenses. This is not required for any other profession or vocation that PVLD regulates. For this reason we respectfully request that "and renewal licensing" in Section 2, page 2, line 19 be removed.

Thank you for the opportunity to testify on Senate Bill No. 2, S.D. 2.

# HAWAII PILOTS ASSOCIATION

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## HOUSE COMMITTEE ON TRANSPORTATION

March 23, 2015

11:00 AM

Conference Room 309

## TESTIMONY OF HAWAII PILOTS ASSOCIATION

### SENATE BILL 2 DRAFT 2, RELATING TO PILOTAGE

Honorable Chair Aquino and Committee Members:

My name is Captain Tom Heberle, and I am a state licensed port pilot, currently serving as the president of the Hawaii Pilots Association (HPA). HPA's membership consists of all state licensed port pilots in Hawaii. The total number of state licensed pilots in Hawaii varies over time between 8 and 10 individuals. HPA supports the intent of SB2 as it would regulate pilot liability and clarify the types of vessels required to use the services of a pilot.

Port pilots have the responsibility of ensuring the safe movement of all types of vessels in Hawaii's commercial harbors, including cruise ships, oil tankers and container ships. Port pilots go aboard ships before they enter or depart from a harbor. For arriving vessels, the pilot usually goes aboard the ship from a pilot boat at a distance of about 2 to 3 miles from shore. Once on board a ship, the pilot directs the movement of the vessel as it moves throughout the harbor. The pilot accomplishes this by giving specific engine and steering commands to the ship's crew, as well as directing the movements of the assisting tug boats. Pilots in Hawaii are regulated by the Department of Commerce and Consumer Affairs (DCCA). The DCCA licenses individual pilots and sets the rates charged by the pilots for their pilotage services.

Pilots perform their duties as independent contractors, and as such are individually liable for damages in the event that they are sued. Many coastal states, including all of the west coast states (Alaska, Washington, Oregon and California) have some form of statutory mechanism to limit civil liability for compulsory port pilots. The state legislatures that have enacted such provisions have decided that regulating civil liability for pilots is sound public policy. Specifically, they recognize that regulating a pilot's civil liability: (1) is a beneficial component of pilot regulatory systems; (2) prevents unnecessary costs to the shipping industry; (3) does not adversely affect a third party's ability to recover damages resulting from a vessel casualty; and



(4) does not remove incentives for pilots to perform their duties in a professional and responsible manner.

I am including with this testimony a brief from the American Pilots Association (APA) on this subject. This brief explains in detail the public policy benefits of statutes that regulate pilot liability. The APA is the national trade association of professional maritime pilots. Its membership is made up of approximately 60 groups of state-licensed pilots, including the Hawaii Pilots Association. APA members pilot over 95 percent of all ocean-going vessels moving in United States waters.

While the HPA supports the liability section of SB2 as it was worded in the original language of SB2, we have serious concerns with the wording in the current version of the bill (SB2 SD2). The current language would require vessels to indemnify and hold harmless pilots. Of the ten coastal states that currently regulate liability for pilots, only California relies on indemnification. California's indemnity provision only applies to the San Francisco Bay area, however, and the indemnification requirement is only one part of a much more detailed liability allocation system known as a "dual rate" system, which is tied to the pilotage rates. Oregon also has a rate-based indemnification provision in its statute, but it is in effect preempted by an additional statutory provision which limits pilot liability to a maximum of \$250. The remaining eight states limit pilot liability to a dollar amount and do not have any indemnification provisions. These eight states account for, and limit the liability of, almost two thirds of all of the state-licensed pilots in the United States,

It should be noted that in many if not all of these states, the trial lawyers' associations initially expressed concerns about such limitations. After learning more about the subject and working with pilots and other supporters of limiting pilots' liability by a cap on damage awards, the trail lawyers in these locations eventually accepted the statutes as fair and reasonable and protective of the ability of parties to be compensated for damages resulting from vessel casualties.

Allocating liability for pilot negligence by way of a shipping interest indemnity, on the other hand, unnecessarily complicates the situation. A statutory indemnification requirement outside of a "dual rate" system would be unique and untried in state pilotage. For these reasons, ship owners oppose the current version of this legislation (SB2 SD2) and this is probably why the indemnification approach has not been followed in other states.

Overall, the dollar cap is the least complicated and fairest way to go about this. Dollar cap statutes have been in existence long enough (several decades in some instances) to be accepted as proper and important components of a state's comprehensive pilotage regulatory



system. They have worked well and are consistent with well-established principles of maritime law. We are not aware of any instance in which a statutory provision limiting pilot liability has ever hindered a third party's ability to recover damages resulting from pilot negligence. Hawaii should proceed like other coastal states and impose a straightforward, simple dollar cap on liability for port pilots with language similar to what was in the original version of SB2.

Regarding the proposed changes in Section 2 of SB2 SD2, we understand that the DCCA has reservations about the proposed language in 462A-3 (3) concerning license renewal requirements. We agree with the DCCA that the proposed wording "and renewal licensing" should be removed from the last sentence in 462A-3 (3). As is done for all other regulated professions in Hawaii, investigations and examinations should be required for the original issuance of licenses, not for renewals.

HRS 462A-18 presently requires a vessel that is "involved in trade or commerce" to employ a pilot, no matter how small that vessel is. The term "involved in trade or commerce" defines the operational status of a vessel at that time, and does not relate to the size of the vessel or to the safety risk that the vessel poses to Hawaii's ports. Furthermore, this operational status can change from voyage to voyage for some vessels, resulting in certain vessels being required to employ a pilot for some movements and not for others. The determination of whether or not a vessel is "involved in trade or commerce" can be a judgment call, requiring knowledge of information about the vessel's operations that is not always readily available to harbor personnel.

The accepted method to determine pilotage requirements and exemptions in other ports in the United States is by the size of the vessel. This is a more practical method to determine which vessels should be required to employ a pilot. Larger vessels pose greater safety risks, and therefore should be required to have additional risk mitigation measures in place such as guidance from a local pilot. 300 gross tons is an appropriate measure to determine the minimum size vessel required to employ a pilot since it is consistent with pilotage requirements in similar west coast ports (Los Angeles and Long Beach) which also have significant amounts of smaller recreational vessel traffic. The 300 gross ton limit is also consistent with Hawaii DOT – Harbors Division administrative rules, which use 300 gross tons as an upper limit for exempting small vessels from certain other safety requirements which are more appropriate for larger vessels (see HAR 19-42-3, HAR 19-42-5, and HAR 19-42-88).

Thank you for this opportunity to provide these comments.

Attachment: American Pilots' Association Brief on Statutory Provisions to Limit or Allocate Liability for Negligence of a Compulsory Pilot, March 22, 2013



## The American Pilots' Association

### STATUTORY PROVISIONS TO LIMIT OR ALLOCATE LIABILITY FOR NEGLIGENCE OF A COMPULSORY PILOT

*Statutory provisions to limit or allocate civil liability for a compulsory marine pilot's negligence: (1) are common and important components of a state's comprehensive pilotage regulatory system; (2) are economically efficient; (3) do not eliminate a third party's ability to recover damages resulting from pilot negligence; and (4) are not a disincentive to professionalism in pilot performance.*

**Introduction:** Every time a state-licensed compulsory pilot boards a ship, he or she knows that a moment's inattention, complacency, wrong decision, or simple mistake could lead to a potentially catastrophic vessel casualty with hundreds of millions of dollars in damages and/or loss of life, the end of the pilot's career, and financial ruin for the pilot and the pilot's family. Coupled with the physical dangers involved in piloting (around the world, most every year, marine pilots are killed or seriously injured on the job), no other occupation or profession presents such risks to its practitioners in the normal course of their activities.

Unbridled exposure to this enormous liability risk could serve as a hindrance to states' efforts to attract and maintain sufficient numbers of qualified pilots and could therefore threaten states' ability to maintain effective compulsory pilotage systems.<sup>1</sup> As a result, statutory provisions dealing with pilot liability have been in place in a number of states for decades and are being implemented or actively considered by other states with growing frequency. Presently, ten of the twenty-four coastal states have some form of statutory mechanism to limit or allocate the civil liability of compulsory marine pilots. These limitation of liability statutes cover more than 60% of all state-licensed pilots in the United States. Statutory provisions limiting or allocating liability for pilot negligence: (1) are common and important components of a state's comprehensive pilotage regulatory system; (2) are economically efficient; (3) do not eliminate a third party's ability to recover damages resulting from pilot negligence; and (4) are not a disincentive to professionalism in pilot performance.

#### **(1) Statutory provisions regulating the civil liability of state-licensed compulsory pilots are common and important components of a state's comprehensive pilotage regulatory system.**

It has long been recognized that the broad grant of authority to states to regulate pilotage includes the authority to regulate rates and to fix the duties and liabilities of pilots. Under this authority, as a component of a broader effort to maintain sufficient rolls of pilots, states have enacted statutes that address civil liability for conduct occurring while the pilot is working under his or her state license. To date, ten coastal states have put in place pilot liability statutes. These statutes have been in existence

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<sup>1</sup> For a detailed overview of the development of the state pilot system in the U.S. and of the broad authority states have to regulate pilots and pilotage in their waters, see Attachment (1).

long enough (several decades in some instances) to be generally accepted as proper and important components of a state's comprehensive pilotage regulatory system.

The economic reality of a pilot's liability exposure today is that the potential damages from a marine accident can be thousands of times – even hundreds of thousands of times – greater than the compensation the pilot receives for an assignment and substantially greater than the typical personal resources of the pilot. Even a minor oil spill can result in damages of millions of dollars. Without some protection against potentially ruinous civil suits, recruitment of top-notch maritime professionals into the piloting ranks, and retention of these individuals as state-licensed pilots, can be challenging.

The pilot liability provisions adopted by coastal states to date can be divided into two basic categories: (1) statutory damages caps and (2) dual rate systems. The most common approach to limiting pilot liability is a simple statutory damages cap. Under this approach, a pilot's liability for damages occasioned by the pilot's errors, omissions, fault, etc. in the performance of pilotage services, will not exceed a fixed dollar amount except in the case of pilot performance that involves something beyond simple negligence (e.g., intentional, willful or reckless misconduct, etc.). Under the second category, a dual rate statute, each vessel requiring a state pilot is offered the option of two pilotage rates. The higher rate includes the cost of obtaining reasonable trip insurance covering a portion of the pilot's potential liability for the pilotage assignment.<sup>2</sup> Alternatively, a vessel may elect a lower rate. The acceptance of the lower rate constitutes an irrevocable, binding agreement by the vessel interests not to assert any personal liability against the pilot and to defend, indemnify, and hold harmless the pilot from third party claims, except claims arising out of the pilot's willful misconduct or gross negligence.

While these provisions take different approaches to addressing pilot civil liability, the respective state legislatures, exercising the broad pilotage oversight responsibilities envisioned in Congress' grant of this authority, decided how best to advance their public policy goal of ensuring that their states maintain sufficient numbers of licensed pilots to protect their waterways.

**(2) Statutory provisions to limit or allocate liability for negligence by a state-licensed compulsory pilot are economically efficient.**

The significant number of states that have adopted statutes allocating or limiting civil liability for damages caused by pilot error have recognized that there is no economic justification for exposing pilots to ruinous civil liability. The legislatures in these states have concluded that unlimited and unrestrained civil liability for pilots is economically inefficient and imposes unnecessary costs on the shipping industry. In the absence of a statutory device to limit the pilot's liability exposure, pilots may be compelled to recover through their pilotage fees either (1) the expense of insurance premiums for liability coverage in meaningful amounts to cover the unlimited liability exposure of all of the pilotage assignments that may occur during the insurance policy term (if such insurance coverage is even commercially available) or (2) compensation that would reflect the magnitude of the pilot's uninsured, unlimited liability exposure.

It is well-settled maritime law that a vessel is responsible *in rem* for damages caused by pilot negligence.<sup>3</sup> As a result, it is a longstanding maritime standard that insurance policies for sea-going

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<sup>2</sup> The amount of required insurance is either fixed or agreed upon and only covers the single pilotage assignment for which the rate is selected. These factors make this dual rate "trip insurance" feasible, whereas it is generally not feasible or is cost prohibitive for an individual pilot to obtain sufficient insurance to cover the unlimited liability exposure for all of the pilotage assignments that might take place during the term an insurance policy.

<sup>3</sup> *The China v. Walsh*, 74 U.S. (7 Wall.) 53 (1868).

vessels cover damages from accidents that occur while the vessel is under pilotage.<sup>4</sup> Vessel owners, therefore, already pay for insurance that covers damages caused by a pilot's errors in the performance of pilotage duties. If pilots are forced to seek pilotage fees that cover adequate insurance premiums or produce compensation commensurate with unlimited civil liability exposure, and commercial shipping interests had to pay such pilotage fees, ship owners would be paying, in effect, double insurance. This is economically inefficient and introduces unnecessary costs to the maritime industry.

In general, commercial vessel interests understand the value of statutory pilot liability allocation provisions. A vessel owner is not personally liable for damage caused by a pilot's negligence<sup>5</sup> and a vessel owner could seek recovery of the cost of damages from the pilot. Historically, vessel interests in states with statutory pilot liability provisions have made the judgment, however, that the value to the vessel owner of a potential recovery against a pilot is outweighed by the costs to the vessel, applied through pilotage fees, of the pilots obtaining sufficient insurance or being compensated to reflect the magnitude of their uninsured liability exposure.

Given the economic rationales of addressing liability as a way of preventing inefficient "double payment" of insurance and holding pilotage rates to reasonable and just levels, compulsory pilot liability allocation provisions are economically efficient and represent sound public policy.

### **(3) Statutory provisions to limit or allocate the civil liability of state-licensed compulsory pilots do not eliminate a third party's ability to recover damages resulting from pilot negligence**

Traditionally, it is not common for third parties or vessel owners who claim to have suffered damage as a result of pilot negligence to seek a judgment against the pilot. This has been for the simple reason that a judgment against a pilot has little value. In most instances, pilots are not able to carry liability insurance in any meaningful amount. As already discussed, such insurance is either not available to pilots at all or would be available only at a cost that far exceeds what pilots could afford or could be passed on to the users of pilotage services through the pilotage rates. The resources of the typical pilot are not sufficient to make recovery of damages from an uninsured pilot a worthwhile exercise, and the pilot's association has no liability for the negligence of one of its members.<sup>6</sup> Irrespective of any liability statute, however, since the vessel itself is liable for damages to a third party caused by the performance of the pilot, and since a vessel's insurance covers damages caused by pilot error, a third party's ability to recover damages is firmly in place.

Additionally, vessel owners and their insurers have generally not sought to establish the pilot as the cause of an accident where, as in most accidents, there are actual or potential third party claims. Again, in those types of situations, the vessel is liable for the pilot's negligence, and the vessel's insurance covers damage due to pilot negligence or error. As a result, even if a vessel owner or its insurance carrier succeeds in proving that an accident or other mishap was solely due to the fault of a pilot, this merely establishes the vessel's liability to injured third parties. Moreover, where there are third party claims, it is in the vessel's interest not to be in an adversarial position vis-à-vis the pilot.

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<sup>4</sup> *Kane v. Hawaiian Indep. Refinery, Inc.*, 690 F.2d 722, 725 (9<sup>th</sup> Cir. 1982).

<sup>5</sup> *Homer Ramsdell Transp. Co. v. Compagnie Generale Transatlantique*, 182 U.S. 406 (1901); *Folkstone Maritime, Ltd. v. CSX Corp.* 64 F. 3d 1037 (7<sup>th</sup> Cir. 1995); *People of California v. Italian Motorship Ilice*, 534 F. 2d 836 (9<sup>th</sup> Cir. 1976); *Mattina v. Commercial Cable Co.*, 137 F. Supp. 472 (S.D.N.Y. 1956).

<sup>6</sup> The rule that a pilot association is not liable for the negligence of one of its members is perhaps the most venerable principle in United States pilotage law. It was established in *Guy v. Donald*, 203 U.S. 399 (1906), and has been religiously followed by courts in numerous cases since.

**(4) Statutory provisions to limit or allocate liability for negligence by a state-licensed compulsory pilot are not a disincentive to professionalism in pilot performance.**

Unlimited liability exposure does not provide any meaningful added measure of deterrence to substandard pilotage. Even without civil liability exposure, a pilot faces a host of potentially serious administrative, regulatory and criminal sanctions for negligence, misconduct, or violations of statutes and regulations. Federal and state licensing authorities may revoke or suspend a pilot's license and in the process deny the pilot an opportunity to practice his or her profession and otherwise earn a living. The Coast Guard and various other regulatory entities can also assess substantial civil penalties and fines related to marine casualties. There are also a number of federal statutes that prescribe criminal penalties – including fines and imprisonment – for conduct leading to a maritime accident, particularly an accident resulting in an oil spill.

Unlimited exposure to civil liability does not incentivize poor pilot performance. The compulsory state-licensed pilot is always responsible for his or her own professional actions and the consequences of those actions, and there is no lack of severe consequences for a pilot who is involved in an accident or has a substandard performance during a piloting assignment. State disciplinary and license actions, federal and state civil penalties, and criminal charges provide incentive enough for pilots to carry out their pilotage assignments in a professional manner.

**Attachments:**

(1) P.G. Kirchner and C.L. Diamond - Unique Institutions, Indispensable Cogs, and Hoary Figures: Understanding Pilotage Regulation in the United States, University of San Francisco Maritime Law Journal, vol. 23 (2010). For the article go to:  
[http://www.americanpilots.org/docs/Understanding\\_Pilotage\\_Regulation\\_APA\\_Law\\_Review\\_Article\\_.pdf](http://www.americanpilots.org/docs/Understanding_Pilotage_Regulation_APA_Law_Review_Article_.pdf)



**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII  
ASSOCIATION FOR JUSTICE (HAJ) IN SUPPORT OF S.B. NO. 2, SD 2**

Date: Monday, March 23, 2015

To: Chairman Henry Aquino and Members of the House Committee on Transportation:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in SUPPORT of S.B. No. 2, SD 2, Relating to Pilotage.

The original version of this bill was to create a limitation for damages in excess of \$5,000 for port pilots for any negligent acts in the performance of pilotage or in the training of pilots except for willful, intentional or reckless misconduct. The consequence of the original version of this bill was basically to absolve a port pilot from liability for negligent acts when the result of a pilot's negligence or error may cause injury to a person, damage to property or even damage to the environment. Under maritime law there is a reasonable standard of care imposed on port pilots and HAJ feels that this standard should not be diminished by legislation creating a cap on damages for negligent acts. See, e.g., California Harbors & Navigation Code section 1198; Oregon Revised Statutes section 776.520. HAJ opposed this original version.

The provision regarding a limitation on damages was replaced with the current version of the bill which we now support. The Senate Judiciary Committee adopted a system whereby the ship and the ship's owner would indemnify the port pilot by having an insurance policy that covers them in the event of their negligence that causes damage. Hawaii requires that large ships using Hawaii harbors and ports use licensed harbor or

port pilots to assist in the safe navigation of these ships. These ships are assessed charges for port pilot services and other port related services and facilities.

Port or Harbor pilots have a very dangerous job. The national average annual salary for port pilots is \$400,000. The high pay reflects the danger involved in their work and is commensurate with the high degree of responsibility required of them.

Carelessness on the part of a port pilot can result in catastrophic injury or death to passengers on a cruise ship, millions of dollars of damage to cargo and vessel for a container ship, or ecological disaster for an oil tanker accident. The original version with a \$5,000 limitation in damages is unreasonable considering the magnitude of damages involved. It is simply unlikely that \$5,000 will adequately cover any major accident involving the large ships that require harbor pilot assistance. Only four states have adopted a cap of \$5,000 or less. One state, Alaska, has a \$250,000 cap and the vast majority of states with navigable waters using pilots (approximately 18 states) have retained the traditional negligence standard for pilots.

Reported incidences of ship accidents involving port pilots are few and far between in Hawaii. Public policy should favor encouraging the continued use of the highest degree of care and responsibility in connection with this dangerous job.

Reducing liability here is a step in the wrong direction. Particularly, when there does not appear to be any overwhelming public interest reason to do so. Yes, the job is dangerous and the potential liability great, but so are other comparable jobs, such as airline pilots who are similarly required to exercise the highest degree of care to insure public safety.

HAI supports this version of the bill. Thank you for the opportunity to present this testimony.





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LATE

March 23, 2015

**Testimony to the House Committee on Transportation**  
**in OPPOSITION to**  
**SB2 SD2, "Relating to Pilotage."**

Aloha Chair Aquino, Vice Chair LoPresti, and members of the Committee.

Thank you for this opportunity to testify on SB2 SD2, "Relating to Pilotage."

I am Charles Toguchi, Hawaii Representative of CLIA-NW&CC, a trade association of eleven major cruise lines operating in Hawaii, the Pacific Northwest, Canada and Alaska. Our member lines include the following companies: Carnival Cruise Line, Celebrity Cruise Line, Crystal Cruises, Disney Cruise Line, Holland America Line, Norwegian Cruise Line (incl. NCL-America), Oceania Cruises, Princess Cruises, Regent Seven Seas Cruises, Royal Caribbean Cruise Line, and Silversea Cruises.

Our member lines bring hundreds of thousands of cruise visitors to Hawaii every year, support thousands of local jobs, and contribute an estimated \$400+ million annually to the state's economy.

Today we are here to provide testimony in opposition to SB 2 SD 2, which proposes to totally transfer the liability of a port pilot to the vessel and the owner or operator of the vessel. The cruise industry is totally opposed to this proposal.

NWCCA Members Lines:

Carnival Cruise Lines ♦ Celebrity Cruises ♦ Crystal Cruises ♦ Disney Cruise Line ♦ Holland America Line ♦ Norwegian Cruise Line ♦ Oceania Cruises ♦ Princess Cruises ♦ Regent Seven Seas Cruises ♦ Royal Caribbean International ♦ Silversea Cruises

We are specifically concerned with the latest Senate amendment that deleted the language that would have "limited the liability of port pilots to a specified monetary limit of damages or loss occasioned by a pilot's error, omission, fault or negligence...and replacing it with language that requires a vessel and the owner or operator of the vessel to defend, indemnify, and hold harmless the pilot, any pilot association to which the pilot belongs, and their officers and employees, with respect to liability arising from any claim, suit, or action, by whomever asserted, resulting in whole or in part from any act, omission, or negligence of the pilot, any pilot association to which the pilot belongs, and their officers and employees."

It is interesting to note that port or harbor pilots licensed in Hawaii under our statutes (HRS 462A) are deemed to be individual contractors who provide services required by law. Because of their training, knowledge, experiences, and important role that they play, pilots are highly compensated. According to several sources, the national average annual salary for harbor pilots is \$400,000. Through the formation of a non-profit pilot's association, pilots are dispatched to vessels to render pilotage services. This association has no control over the selection of persons to be licensed as pilots or their discharge. The association also has no direction over the manner in which an individual pilot performs the pilot's duties.

In addition, port or harbor pilots are not hired, trained, qualified, or supervised by the owner or operator of a vessel.

It is for these reasons that CLIA-NW&CC strongly opposes the Liability section in SB 2 SD 2. With the exception of this section, we have no problems with the rest of the bill.

Thank you for this opportunity to present testimony before your committee.

Regards,

*Charlie Toguchi*

Charlie Toguchi  
Hawaii Representative  
CLIA-NW&CC

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